



No. 83-372
IN THE

Supreme Court of the United States

October Term, 1983

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,
Appellant,

vs.

UNITED STATES POSTAL SERVICE,
Appellee.

Appeal from the United States Court of
Appeals for the Ninth Circuit.

JOINT APPENDIX.

JOHN K. VAN DE KAMP,
Attorney General,
ARTHUR C. de GOEDE,
Assistant Attorney General,
EDMOND B. MAMER,
PATTI S. KITCHING,

Deputy Attorneys General,
3580 Wilshire Blvd.,
Los Angeles, Calif. 90010,
(213) 736-2104,

Counsel for Appellant.

REX E. LEE,
Solicitor General,
Department of Justice,
Washington, D.C. 20530,
(202) 633-2217.

Appeal Docketed August 31, 1983.
Probable Jurisdiction Noted Jan. 9, 1984.

TABLE OF CONTENTS

	Page
Docket Entries	1
Agreement Between the Secretary of the Treasury and the State of California Pursuant to Section 5517 of Title 5 of the United States Code and Executive Order 10407 Dated November 6, 1952	3
Complaint	8
Answer	45
Petition for Rehearing and Suggestion That Rehearing Be En Banc	51
Order Noting Probable Jurisdiction	62

Documents Contained In Jurisdictional Statement.

The following opinions, decisions, judgments, and orders have been omitted in printing this appendix because they appear on the following pages in the appendix to the printed Jurisdictional Statement.

Judgment of the District Court for the Central District of California, filed July 7, 1980	A17
Findings of Fact and Conclusions of Law of the District Court for the Central District of Cal- ifornia, filed August 6, 1980	A19
Opinion of the Court of Appeals for the Ninth Circuit, filed February 10, 1983	A1
Order of the Court of Appeals for the Ninth Circuit Amending Opinion and Denying Rehearing, filed June 3, 1983	A26

Docket Entries.

DATE	NR.	PROCEEDINGS
12-13-78	dg	1. Fld complt. issd summs Case may be ref to Mag Penne
12-26-78	lf	2. Fld retn of sms, servd US Postal Service on 12-21-78
1/24/79	nm	3. Fld ORD(HP)(RF), dtd 1/24/79, transfg the actn to the cal of Judge Pregerson for all fur procdgs. Attys notified.
2/16/79	jcd	4. Fld Stip and ORDER ext'g ti for deft to respnd to complt to 3/23/79.
3/23/79	jcd	5. Fld deft's ANSWER to complt.
5/10/79	jcd	6. Fld Crt's Notc of PTC and Ord re unservd ptys, retbl 7/30/79, 9a.m.
5/23/79	jcd	7. Fld Stip and ORD ext'g ti for pltf to respnd to deft's 1st interros to 6/8/79.
7/17/79	jcd	8. Fld Stip and ORD cont'g PTC to 9/24/79, 9a.m.
9/5/79	jcd	9. Fld Stip and ORD cont'g PTC to 11/19/79 and that the ptys shall fi cross motns for S/J to be heard on 11/19/79, 9am
10/11/79	jcd	10. MIN ORD: On Crt's own motn mtrr has been set for a stat conf and settlmnt conf on 10/26/79, 1p.m.
10/25/79	jcd	11. Fld Stip and ORD cont'g hrg on x-motns for S/J to 1/22/80, 9a.m.
11/1/79	jcd	12. Fld Stip and ORD consolidating actns, flg of cross- motns for S/J by 12/28/79 and a response to the respective motns by 1/9/80. The hrg on the motns shall be hld on 1/21/80, 9a.m.
5/12/80	pg	13. Fld Stip & ORD for cong of hrg on motn for S/J re X/motns is cont to 6/24/80, 1:30pm. cont of flng opp to defts motn for S/J is cont to 5/19/80 & defts will fl a resp to 5/30/80
5/19/80	pg	14. Fld pltf's Suppl memo of P&A in supt of pltf's motn for S/J & in opp to defts motn for S/J.
6-24-80	cg	15. MIN ORD: hrg x-motns for S/J cnsl present args crt taks motns under subm

DATE	NR.	PROCEEDINGS
7/7/80	lp	16. Fld Judgmt & ORD (Consent) that judgmt be entered in favor of deft & against pltf's dismg these consolidated actn. (ENT 7/9/80) Mld copys. MD JS-6.
7/7/80	lp	17. Fld findings of fact & conclusions of law. (ENT 7/9/80)
8/6/80	rlb	18. Fld ORD that the finds of fact & cnslc of law fld 7/7/80 & entered 7/9/80 are vacated; Fur ORD the finds of fact & cncls of law fld this dt shall constitute the Crt's finds of fact & cncls of law in suppt judgmt ent 7/9/80. (Ent 8/8/80 m/cpys & ntfd prtys)
		19. Fld finds of fact & cncl of law.
9-3-80	iw	20. Fld pltf's NOTC OF APPEAL to 9th cir C/A frm jdgmt ent 7-9-80 \$70.00 fldng & docket fees pd.
9-12-80	kt	21. Fld pltf/appellant's desig of rp'tr's transc of oral proceedgs for rec on appeal
2-19-81	yd	22. Fld pltf's designatn of Clerk's record on appeal
8-5-81	yd	23. Fld appellee's designatn of Clerk's record on appeal
6/17/83	am	LODGED cpy of 9th Cir C/A ord affirmng jgmt of D.C. (CA 80-5694, 80-5700)
7/21/83	gth	24. MIN ORD: Ord that jdmt of USCA revers USDC on CV 78-4014 & affirmng USDC on CV 78-4746 be fld & spread. (eNT 7/22/83)

**Agreement Between the Secretary of the Treasury and
the State of California Pursuant to Section 5517 of
Title 5 of the United States Code and Executive Order
10407 Dated November 6, 1952.**

Pursuant to 5 U.S.C. 5517 and Executive Order 10407, dated November 6, 1952, it is hereby agreed by the Secretary of the Treasury and the State of California as follows:

1. The head of each agency of the United States shall comply with the withholding provisions of the State of California income tax law, regulations, procedural instructions and reciprocal agreements, which are applicable to employers generally, except as otherwise provided herein, with respect to employees of such agency who are subject to such tax and whose regular place of Federal employment is within the State of California.
2. The provisions herein are effective with respect to wages to be paid, commencing with the first whole pay period, after execution of this agreement as evidenced by the date of the last signature below.
3. Nothing in this agreement shall be deemed:
 - (a) to apply with respect to compensation for services as a member of the Armed Forces of the United States; or
 - (b) to require collection by agencies of the United States of delinquent tax liabilities of Federal employees; or
 - (c) to consent to the application of any provision of law of the State of California which has the effect of (1) imposing more burdensome requirements upon the United States than it imposes on other employers, or (2) subjecting the United States or any of its officers or employees to any penalty or liability, or (3) requiring the observance of pro-

cedures which do not substantially conform to the usual fiscal practices of agencies of the United States.

4. The compensation of Federal employees on which the income tax shall be withheld shall be their "wages" as defined in Section 3401(a), as amended, of the Internal Revenue Code of 1954 and regulations issued thereunder. Withholding shall not be required on wages earned but unpaid at the date of an employee's death, which is consistent with the Federal rule.
5. State income tax will be withheld only on the entire compensation of Federal employees. Nonresident employees who, under the State income tax law, must allocate at least three-fourths of their compensation to the State of California will be subject to withholding on their entire compensation. Nonresident employees who, under the California income tax law, must allocate less than three-fourths of their compensation to the State may elect to (1) have State income tax withheld on their entire compensation, or (2) have no California income tax withheld on their compensation.
6. Without regard to otherwise applicable law, regulations, procedural instructions or reciprocal agreements of the State of California, the method for calculating the amount to be withheld from an employee's salary shall be discretionary with the employing Federal agency provided the method used shall produce approximately the equivalent tax required to be withheld from the compensation of each employee subject to the income tax.
7. Where it is the practice of a Federal agency under Federal tax withholding procedure to make returns and payment of the tax on an estimated basis, subject to

later adjustment based on audited figures, this practice may be applied with respect to the State income tax where the agency has made appropriate arrangements with the State income tax authorities.

8. Copies of Federal Form W-2, "Wage and Tax Statement," may be used for reporting withheld taxes to the State of California.
9. As used in this agreement, the terms "agency," "Armed Forces of the United States," "employees" and "regular place of Federal employment" shall have the meanings defined in Executive Order 10407.
10. This agreement supersedes any previous agreement between the Secretary of the Treasury and the *State of California* pursuant to the cited authority. Further, this agreement shall be subject to any amendments of the provisions of 5 U.S.C. 5517 and to any rules and regulations issued thereunder and amendments thereto.

Date Feb. 4, 1974

/s/ David Lyman
Commissioner of Government
Financial Operations
State of California

Date February 25, 1974

By: /s/
Executive Officer
Franchise Tax Board

TECHNICAL EXPLANATION

1. *Paragraph 1* has been revised (a) for clarity, to state specifically that agencies shall comply with the withholding provisions of law, regulations, procedural instructions, and reciprocal agreements (prior agreements made reference only to compliance with the law.), and (b) to include the phrase "which are applicable to employers generally," which criterion is implicit in Executive Order 10407.

2. *Paragraph 2* specifies uniformly when the withholding of tax shall commence.

3. *Paragraph 3(c)(3)* has been added so as to provide a basis to ascertain that state requirements conform to our usual fiscal practices, which is consistent with the Executive Order which requires that agreements "shall provide for procedures for the withholding, the filing of returns, and the payment of the tax to the State or Territory which conform, in so far as practicable, to the usual fiscal practices of agencies of the United States."

4. *Paragraph 5* provides for withholding uniformly only on the entire compensation of employees subject to the tax, including nonresident employees who allocate at least three-fourths of their compensation to a state. Nonresident employees allocating less than three-fourths of their compensation to a state may, optionally, have state income tax withheld on their entire income. This latter provision would involve few employees, since it is most unusual that an employee whose regular place of Federal employment is within a state would be in the position of allocating less than three-fourths of his compensation to that State.

The purpose of paragraph 5 is, of course, to provide uniformly for withholding only on the entire compensation of Federal employees. The practice followed by many States of imposing a tax and withholding requirements on that part

of the compensation of nonresidents which is allocable to the taxing State creates problems in large centralized pay-rolling operations. Under these conditions, employees in this category must be treated differently for tax withholding purposes depending upon what percentage of their compensation is allocable to the taxing State.

5. *Paragraph 6* is to allow Federal agencies to compute State tax withholding by using any withholding method which shall produce approximately the equivalent tax required to be withheld from the compensation of each employee subject to the income tax.

The purpose of this paragraph is (1) to provide large Federal agencies with alternative methods for withholding state income tax in a manner that is suitable for their large centralized payroll systems, (2) to encourage uniform withholding of state income tax by all agencies, and (3) to waive the "prior approval" requirements as prescribed by certain states for use of a percentage or formula withholding method.

**Complaint for Damages for
Failure to Deliver Personal
Property Levied Upon.**

United States District Court, Central District of California.

Franchise Tax Board, Plaintiff, v. United States Postal Service, Defendant. No. 78 4746.

Filed: December 13, 1978.

COMES NOW, plaintiff, who alleges as follows:

FIRST CAUSE OF ACTION

1. The State of California, Franchise Tax Board ("Board") is the duly constituted governmental agency charged with the administration, imposition, enforcement and collection of taxes under the California Revenue and Taxation Code.

2. Jurisdiction is conferred upon this Court by Section 409(a) of Title 39 of the United States Code for the reason that this action is brought against the Postal Service. Defendant, the United States Postal Service ("Postal Service") is, and at all times material herein was, an establishment of the executive branch of the Government of the United States and doing business in Los Angeles County.

3. Section 18817 of the California Revenue and Taxation Code provides for the levying on employer's obligors.

4. The Board is authorized to issue a Notice to Withhold according to the provisions of section 18817 of the California Revenue and Taxation Code.

5. The Board is informed and believes and on that basis alleges that McKinley Herd ("Herd"), is, and at all times material herein was, a resident of the County of Los Angeles, State of California, and an employee of the Postal Service.

6. Herd is indebted to the Board for unpaid taxes for the year 1972 in the sum of \$1,577.16, plus applicable interest.

7. The 1972 tax liability of Herb is secured by Lien Certificate Number 25-03789 recorded in Los Angeles County on February 14, 1977 as instrument 77-158024. The 1974 tax liability of Herd is also secured by Lien Certificate Number 21-09544 recorded in Los Angeles County on February 19, 1976 in Book M5258, Page 224. True copies of the lien certificates are attached hereto as Exhibits "A" and "B", respectively, and by such reference incorporated herein as though set forth in full.

8. On or about July 28, 1978, the Postal Service was served notice pursuant to section 18817 of the California Revenue and Taxation Code that tax debtor Herd was delinquent in payment to the Board in the amount of \$1,577.16.

9. The notice referred to in the paragraph immediately above levied upon the credits or payments paid or owed to Herb by the Postal Service, a true copy of which notice is attached hereto as Exhibit "C" and by such reference incorporated herein as though set forth in full.

10. The Postal Service in responding to said notice denied that any funds owed to Herd were subject to an Order to Withhold, a true copy of which denial wherein the Postal Service denies the order is attached hereto as Exhibit "D" and by such reference incorporated herein as though set forth in full.

11. The Postal Service is an obligor of Herd because on or about July 28, 1978 it had in its possession personal property payable to Herd.

12. Under section 18818 of the California Revenue and Taxation Code, the Postal Service as an obligor is liable to

the Board for the amount the Postal Service owed to Herd at the time of the service of the Notice to Withhold up to the sum of \$1,577.16.

SECOND CAUSE OF ACTION

13. The Board realleges paragraphs 1 - 4, inclusive, at this point and by such reference incorporates said paragraphs herein as though set forth in full.

14. The Board is informed and believes and on that basis alleges that Wallace E. Norwood ("Norwood") is, and at all times material herein was, a resident of the County of Los Angeles, State of California, and an employee of the Postal Service.

15. Norwood is indebted to the Board for unpaid taxes for the year 1974 in the sum of \$952.21, plus applicable interest.

16. The 1974 tax liability of Norwood is secured by Lien Certificate Number 21-10045, recorded in Los Angeles County on July 13, 1976 in Book M5404, Page 472, a true copy of which lien certificate is attached hereto as Exhibit "E" and by such reference incorporated herein as though set forth in full.

17. On or about August 15, 1978, the Postal Service was served notice pursuant to section 18817 of the California Revenue and Taxation Code that tax debtor Norwood was delinquent in payment to the Board in the amount of \$952.21.

18. The notice referred to in the paragraph immediately above levied on the credits or payments paid or owed to Norwood by the Postal Service, a true copy of which notice is attached hereto as Exhibit "F" and by such reference incorporated herein as though set forth in full.

19. The Postal Service in responding to said notice denied that any funds owed to Norwood were subject to an Order to Withhold, a true copy of which denial wherein the

Postal Service denies the order is attached hereto as Exhibit "G" and by such reference incorporated herein as though set forth in full.

20. The Postal Service is an obligor of Norwood because on or about August 15, 1978 it had in its possession personal property payable to Norwood.

21. Under section 18818 of the California Revenue and Taxation Code, the Postal Service as an obligor is liable to the Board for the amount the Postal Service owed to Norwood at the time of the service of the Notice to Withhold up to the sum of \$952.21.

THIRD CAUSE OF ACTION.

22. The Board realleges paragraphs 1 - 4, inclusive, at this point and by such reference incorporates said paragraphs as though set forth in full.

23. The Board is informed and believes and on that basis alleges that Cecil C. Sedberry ("Sedberry") is, and at all times material herein was, a resident of the County of Los Angeles, State of California, and an employee of the Postal Service.

24. Sedberry is indebted to the Board for unpaid taxes for the years 1972, 1973 and 1974 in the total sum of \$5,086.60, plus applicable interest.

25. The 1972, 1973 and 1974 tax liabilities of Sedberry are secured by Lien Certificate Number 21-08967 recorded in Los Angeles County on May 15, 1975 in Book M5010, Page 822. The 1975 and 1976 tax liabilities are also secured by Lien Certificate Number 21-11127 recorded in Los Angeles County on March 1, 1978 as instrument 78-224224. True copies of the lien certificates are attached hereto as Exhibits "H" and "I," respectively, and by such reference incorporated herein as though set forth in full.

26. On or about August 22, 1978, the Postal Service was served notice pursuant to section 18817 of the California Revenue and Taxation Code that tax debtor Sedberry was delinquent in payment to the Board in the amount of \$5,086.60.

27. The notice referred to in the paragraph immediately above levied on the credits or payments paid or owed by Sedberry by the Postal Service, a true copy of which notice is attached hereto as Exhibit "J" and by such reference incorporated herein as though set forth in full.

28. The Postal Service in responding to said notice denied that any funds owed to Sedberry were subject to an Order to Withhold, a true copy of which denial wherein the Postal Service denies the order is attached hereto as Exhibit "K" and by such reference incorporated herein as though set forth in full.

29. The Postal Service is an obligor of Sedberry because on or about August 22, 1978 it had in its possession personal property payable to Sedberry.

30. Under section 18818 of the California Revenue and Taxation Code, the Postal Service as an obligor is liable to the Board for the amount the Postal Service owed to Sedberry at the time of the service of the Notice to Withhold up to the sum of \$5,086.60.

FOURTH CAUSE OF ACTION

31. The Board realleges paragraphs 1 - 4, inclusive, at this point and by such reference incorporates said paragraphs herein as though set forth in full.

32. The Board is informed and believes and on that basis alleges that Joseph Stovall ("Stovall") is, and at all times material herein was, a resident of the County of Los Angeles, State of California, and an employee of the Postal Service.

33. Stovall is indebted to the Board for unpaid taxes for the years 1972 and 1973 in the total sum of \$729.45, plus applicable interest.

34. The 1972 and 1973 tax liabilities of Stovall are secured by Lien Certificate Number 21-09161 recorded in Los Angeles County on July 25, 1975 in Book M5073, Pages 662, a true copy of which lien certificate is attached hereto as Exhibit "L" and by such reference incorporated herein as though set forth in full.

35. On or about August 22, 1978, the Postal Service was served notice pursuant to section 18817 of the California Revenue and Taxation Code that tax debtor Stovall was delinquent in payment to the Board in the amount of \$729.45.

36. The notice referred to in the paragraph immediately above levied on the credits or payments paid or owed to Stovall by the Postal Service, a true copy of which notice is attached hereto as Exhibit "M" and by such reference incorporated herein as though set forth in full.

37. The Postal Service in responding to said notice denied that any funds owed to Stovall were subject to an Order to Withhold, a true copy of which denial wherein the Postal Service denies the order is attached hereto as Exhibit "N" and by such reference incorporated herein as though set forth in full.

38. The Postal Service is an obligor of Stovall because on or about August 22, 1978 it had in its possession personal property payable to Stovall.

39. Under section 18818 of the California Revenue and Taxation Code, the Postal Service as an obligor is liable to the Board for the amount the Postal Service owed to Stovall at the time of the service of the Notice to Withhold up to the sum of \$729.45.

WHEREFORE, the Board prays:

1. For Judgment in the amount of \$1,577.16 on the First Cause of Action;
2. For Judgment in the amount of \$952.21 on the Second Cause of Action;
3. For Judgment in the amount of \$5,086.60 on the Third Cause of Action;
4. For Judgment in the amount of \$729.45 on the Fourth Cause of Action;
5. For its costs of suit incurred herein;
6. For such further relief as the Court may deem just, necessary and proper.

EVELLE J. YOUNGER, Attorney General
PHILIP C. GRIFFIN,
LAWRENCE K. KEETHE,
Deputy Attorneys General

By /s/ Lawrence K. Keethe
LAWRENCE K. KEETHE
Attorneys for Plaintiff

EXHIBIT A.

STATE OF CALIFORNIA
FRANCHISE TAX BOARD

LB:C:LM:CR

Certificate of Amount of Tax, Interest, and Penalties Due

*(Filed Pursuant to Parts 10 and 11, Division 2,
Revenue and Taxation Code)*

Certificate Number: 25-03789

County Recorded in: LOS ANGELES

The Franchise Tax Board of the State of California hereby certifies that the following named taxpayer is liable under Parts 10 and 11 of Division 2 of the Revenue and Taxation Code to the State of California for amounts due and required to be paid by said taxpayer as follows:

Name of Taxpayer: MC KINLEY HERD

Social Security No.: 553 32 9941

Corporate No.:

Last Known Address: 415 N. WILLOW, COMPTON
CA 90221

For Taxable Years: 1972 - 72-03697676

Tax \$655.00, Penalties \$327.50, Interest \$262.03,
Cost(s) \$6.00, Total \$1,250.53.

That further interest will accrue at the rate prescribed by law until paid; that the Franchise Tax Board of the State of California complied with all of the provisions of Parts 10 and 11 of Division 2 of the Revenue and Taxation Code of the State of California in computing, levying, determining and assessing the tax; that said amounts are due and payable and have not been paid.

IN WITNESS WHEREOF, The Franchise Tax Board of the State of California has duly authorized the undersigned to execute this Certificate in its name.

Dated: February 11, 1977, FRANCHISE TAX BOARD
of the State of California

By /s/ I.D. Samford
I.D. SAMFORD

[SEAL]

This is to certify that this is a full, true and correct copy
of the original document on file with the Franchise Tax
Board.

Martin Huff, Executive Officer
By /s/ V. Forsch

EXHIBIT B.

STATE OF CALIFORNIA
FRANCHISE TAX BOARD

LA-C:SE:bl

Certificate of Amount of Tax, Interest, and Penalties Due
*(Filed Pursuant to Parts 10 and 11, Division 2,
Revenue and Taxation Code)*

Certificate Number: 21-09544

County Recorded in: LOS ANGELES

The Franchise Tax Board of the State of California hereby certifies that the following named taxpayer is liable under Parts 10 and 11 of Division 2 of the Revenue and Taxation Code to the State of California for amounts due and required to be paid of said taxpayer as follows:

Name of Taxpayer: MCKINLEY HERD

Social Security No.: 553-32-9941

Corporate No.:

Last Known Address: 415 North Willow, Compton,
California 90221

For Taxable Years: 1971-02467178 1974--75-
25571673

Tax \$117.39, Penalties \$134.12, Interest \$79.68,
Cost(s) \$6.00, Total \$337.19;

That further interest will accrue at the rate prescribed by law per year until paid; that the Franchise Tax Board of the State of California complied with all of the provisions of Parts 10 and 11 of Division 2 of the Revenue and Taxation Code of the State of California in computing, levying, determining and assessing the tax; that said amounts are due and payable and have not been paid.

IN WITNESS WHEREOF, The Franchise Tax Board of the State of California has duly authorized the undersigned to execute this Certificate in its name.

Dated: February 17, 1976, FRANCHISE TAX BOARD
of the State of California

By /s/ R. E. Bancroft
R. E. BANCROFT
TAX COMPLIANCE SUPERVISOR I

[SEAL]

This is to certify that this is a full, true and correct copy
of the original document on file with the Franchise Tax
Board.

Martin Huff, Executive Officer
By /s/ V. FORSCH

EXHIBIT C.

ORDER TO WITHHOLD
PERSONAL INCOME TAX

PLEASE RETURN THIS COPY WITH A CHECK PAYABLE TO THE FRANCHISE TAX BOARD. IF NO MONEY IS DUE THE TAXPAYER PLEASE RETURN THE BLUE COPY.

[Letterhead]

State of California, Franchise Tax Board.

July 28, 1978 ma

POSTMASTER

ATTN: PERSONNEL SECTION

LOS ANGELES, CA 90052

Soc. Sec. No. 553 32 9941

Taxpayer: MCKINLEY HERD

Account No.: 553 32 9941HERD

Total Due: \$1,577.16

Year(s): 1971 - 71-02467178, 1972 - 77-70084197, 1973
- 73-03764250, 1974- 75-25571673, 1975 - 75-
03764248

THE FRANCHISE TAX BOARD of the State of California hereby notifies you that the total amount of tax, penalty, and interest was not paid when due and is now due, owing and unpaid as shown.

WHEREFORE, on behalf of the People of the State of California, you are required to deduct and withhold the above amount from any credits or payments of any nature due, owing and unpaid to the taxpayer and forward the amount to this office with a remittance made payable to the Franchise Tax Board attached to the original copy. If no money is due the taxpayer please complete the questionnaire on the blue copy and return it (Section 18817 of the Revenue and Taxation Code).

FAILURE TO WITHHOLD and remit the amount due to the Franchise Tax Board may make you liable for such amount (Section 18818 of the Revenue and Taxation Code).

YOU ARE NOT LIABLE to the taxpayer for any amounts that you are required to withhold and pay to this Board (Section 18819 of the Revenue and Taxation Code).

M. BONNEMA
Collection Section

IMPORTANT!

PLEASE GIVE THE COPY OF THIS ORDER TO THE TAXPAYER AS SOON AS POSSIBLE. The taxpayer should contact one of our offices immediately if this order should not be complied with.

EXHIBIT D.

[Letterhead]

United States Postal Service
WESTERN REGION
San Bruno, CA 94099

August 1, 1978

In reply refer to:

020:59-E-3:LTJ:j

State of California
Franchise Tax Board
Collection Section
3530 Atlantic Avenue
Long Beach, CA 90807

Re: McKinley Herd, SSN 553 32 9941

Gentlemen:

We are returning herewith the Order to Withhold Personal Income Tax which you forwarded to the Postmaster in Los Angeles. It is our understanding that your Headquarters office and the office of the State Attorney General agree that such orders are not applicable to federal agencies such as the United States Postal Service. If this understanding is not correct, please contact us further.

Yours very truly,

/s/ Lyman T. Johnston

Lyman T. Johnston
Regional Counsel

Enclosure

EXHIBIT E.
STATE OF CALIFORNIA
FRANCHISE TAX BOARD
LA-C:EB:rp

Certificate of Amount of Tax, Interest, and Penalties Due
(Filed Pursuant to Parts 10 and 11, Division 2,
Revenue and Taxation Code)

Certificate Number: 21-10045

County Recorded in: LOS ANGELES

The Franchise Tax Board of the State of California hereby certifies that the following named taxpayer is liable under Parts 10 and 11 of Division 2 of the Revenue and Taxation Code to the State of California for amounts due and required to be paid by said taxpayer as follows:

Name of Taxpayer: WALLACE E. NORWOOD
AND/OR
YOULES M. NORWOOD

Social Security No.: 556-56-2739 (H) 556-78-7359
(W)

Corporate No.:

Last Known Address: 308 E. 11th Street, Los Angeles, California 90061

For Taxable Years: 1973-03479384; 1974-025108481

Tax \$1,769.38, Penalties \$857.95, Interest \$188.21,
Cost(s) \$6.00, Total \$2,821.54

That further interest will accrue at the rate prescribed by law until paid; that the Franchise Tax Board of the State of California complied with all of the provisions of Parts 10 and 11 of Division 2 of the Revenue and Taxation Code of the State of California in computing, levying, determining and assessing the tax; that said amounts are due and payable and have not been paid.

IN WITNESS WHEREOF, The Franchise Tax Board of the State of California has duly authorized the un-

dersigned to execute this Certificate in its name.

Dated: July 9, 1976, FRANCHISE TAX BOARD
of the State of California.

By /s/ A. D. Kinnett

A. D. KINNETT

TAX COMPLIANCE SUPERVISOR I

[SEAL]

This is to certify that this is a full, true and correct
copy of the original document on file with the Franchise
Tax Board.

Martin Huff, Executive Officer

by /s/ V. Forsch

EXHIBIT F.
ORDER TO WITHHOLD
PERSONAL INCOME TAX

PLEASE RETURN THIS COPY WITH A CHECK PAYABLE TO THE FRANCHISE TAX BOARD. IF NO MONEY IS DUE THE EMPLOYEE. PLEASE RETURN THE BLUE COPY.

[Letterhead]

State of California, Franchise Tax Board.

August 15, 1978

LA-C:KI:aep

U. S. Post Office

Personnel Section

Los Angeles, CA 90052

Soc. Sec. No. 556-56-2739

Taxpayer: WALLACE E. NORWOOD

Account No.: 556-56-2739NORW

Total Due: \$952.21

Years(s): 1973, 1975, 1975

THE FRANCHISE TAX BOARD of the State of California hereby notifies you that the total amount of tax, penalty, and interest was not paid when due and is now due, owing and unpaid as shown.

WHEREFORE, on behalf of the People of the State of California, you are required to deduct and withhold the above amount from any credits or payments of any nature due, owing and unpaid to the taxpayer and forward the amount to this office with a remittance made payable to the Franchise Tax Board attached to the original copy. If no money is due the employee, please complete the questionnaire on the blue copy and return it (Section 18817 of the Revenue and Taxation Code).

FAILURE TO WITHHOLD and remit the amount due to the Franchise Tax Board may make you liable for such

amount (Section 18818 of the Revenue and Taxation Code).

YOU ARE NOT LIABLE to the taxpayer for any amounts that you are required to withhold and pay to this Board (Section 18819 of the Revenue and Taxation Code).

Collection Section

IMPORTANT!

PLEASE GIVE THE COPY OF THIS ORDER TO THE TAXPAYER AS SOON AS POSSIBLE. The taxpayer should contact one of our offices immediately if this order should not be complied with.

EXHIBIT G.

[Letterhead]

United States Postal Service
WESTERN REGION
San Bruno, CA 94099

August 23, 1978

In reply refer to:

020:59-E-3:LTJ:j

State of California

Franchise Tax Board

Collection Section

3200 Wilshire Blvd.

Los Angeles, CA 90010

Re: Wallace E. Norwood, SSN 556-56-2739

Gentlemen:

We are returning herewith the Order to Withhold Personal Income Tax which you forwarded to the Postmaster in Los Angeles. It is our understanding that your Headquarters office and the office of the State Attorney General agree that such orders are not applicable to federal agencies such as the United States Postal Service. If this understanding is not correct, please contact us further.

Yours very truly,

/s/ Lyman T. Johnston

Lyman T. Johnston

Regional Counsel

Enclosure

EXHIBIT H.

**STATE OF CALIFORNIA
FRANCHISE TAX BOARD**

LA-C:Kl:jg

Certificate of Amount of Tax, Interest, and Penalties Due
*(Filed Pursuant to Parts 10 and 11, Division 2,
Revenue and Taxation Code)*

Certificate Number: 21-08967

County Recorded in: LOS ANGELES

The Franchise Tax Board of the State of California hereby certifies that the following named taxpayer is liable under Parts 10 and 11 of Division 2 of the Revenue and Taxation Code to the State of California for amounts due and required to be paid by said taxpayer as follows:

Name of Taxpayer: CECIL C. SEDBERRY

Social Security No.: 463-26-5192

Corporate No.:

**Last Known Address: 3542 West 118th Place,
Inglewood, California 90303**

**For Taxable Years: 1967-06385333, 1968-02419042,
1969-02433976, 1970-02437998,
1971-02424545, 1972-025157171,
1973-025851312, 1974-7500470332**

**Tax \$2,322.20, Penalties \$1,170.94, Interest \$763.38,
Cost(s) \$6.00, Total \$4,262.52;**

That further interest will accrue at the rate of six per cent per year until paid; that the Franchise Tax Board of the State of California complied with all of the provisions of Parts 10 and 11 of Division 2 of the Revenue and Taxation Code of the State of California in computing, levying, determining and assessing the tax; that said amounts are due and payable and have not been paid.

IN WITNESS WHEREOF, The Franchise Tax Board of the State of California has duly authorized the undersigned to execute this Certificate in its name.

Dated: May 12, 1975 FRANCHISE TAX BOARD of the State of California.

By /s/ J. G. A. Frimand
J. G. A. FRIMAND
TAX COMPLIANCE SUPERVISOR I

[SEAL]

This is to certify that this is a full, true and correct copy of the original document on file with the Franchise Tax Board.

Martin Huff, Executive Officer
By /s/ V. FORSCH

EXHIBIT I.

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
LA-C:HB:SDA

Certificate of Amount of Tax, Interest, and Penalties Due
*(Filed Pursuant to Parts 10 and 11, Division 2,
Revenue and Taxation Code)*

Certificate Number: 21-11127

County Recorded in: LOS ANGELES

The Franchise Tax Board of the State of California hereby certifies that the following named taxpayer is liable under Parts 10 and 11 of Division 2 of the Revenue and Taxation Code to the State of California for amounts due and required to be paid by said taxpayer as follows:

Name of Taxpayer: CECIL C. SEDBERRY and/or
HATTIE M. SEDBERRY

Social Security No: 463-26-5192 (II)

Corporate No.:

Last Known Address: 3542 West 118th Place,
Inglewood, California 90303

For Taxable Years: 1975-025146072; 1976--77-
26085141

Tax \$543.00, Penalties \$346.50, Interest \$91.61,
Cost(s) \$6.00, Total \$987.11

That further interest will accrue at the rate prescribed by law until paid; that the Franchise Tax Board of the State of California complied with all of the provisions of Parts 10 and 11 of Division 2 of the Revenue and Taxation Code of the State of California in computing, levying, determining and assessing the tax; that said amounts are due and payable and have not been paid.

IN WITNESS WHEREOF; The Franchise Tax Board of the State of California has duly authorized the undersigned

to execute this Certificate in its name.

Dated: February 23, 1978 FRANCHISE TAX BOARD
of the State of California

By /s/ R. E. Bancroft
R. E. BANCROFT
TAX COMPLIANCE SUPERVISOR I

[SEAL]

This is to certify that this is a full, true and correct copy
of the original document on file with the Franchise Tax
Board.

Martin Huff, Executive Officer
By /s/ V. Forsch

EXHIBIT J.

ORDER TO WITHHOLD
PERSONAL INCOME TAX

PLEASE RETURN THIS COPY WITH A CHECK PAYABLE TO THE FRANCHISE TAX BOARD. IF NO MONEY IS DUE THE EMPLOYEE, PLEASE RETURN THE BLUE COPY.

[Letterhead]

State of California, Franchise Tax Board.

August 22, 1978

LA-C:MK:YA

Postmaster

Attn: Personnel Section

Los Angeles, CA 90052

Soc. Sec. No. 463-26-5192

Taxpayer: CECIL C. SEDBERRY

Account No.: 463-26-5192 SEDB

Total Due: \$5086.60

Year(s): 1974, 1975, 1976

THE FRANCHISE TAX BOARD of the State of California hereby notifies you that the total amount of tax, penalty, and interest was not paid when due and is now due, owing and unpaid as shown.

WHEREFORE, on behalf of the People of the State of California, you are required to deduct and withhold the above amount from any credits or payments of any nature due, owing and unpaid to the taxpayer and forward the amount to this office with a remittance made payable to the Franchise Tax Board attached to the original copy. If no money is due the employee, please complete the questionnaire on the blue copy and return it (Section 18817 of the Revenue and Taxation Code).

FAILURE TO WITHHOLD and remit the amount due to the Franchise Tax Board may make you liable for such

amount (Section 18818 of the Revenue and Taxation Code).

YOU ARE NOT LIABLE to the taxpayer for any amounts that you are required to withhold and pay to this Board (Section 18819 of the Revenue and Taxation Code).

Collection Section

IMPORTANT!

PLEASE GIVE THE COPY OF THIS ORDER TO THE TAXPAYER AS SOON AS POSSIBLE. The taxpayer should contact one of our offices immediately if this order should not be complied with.

EXHIBIT K.

[Letterhead]

United States Postal Service
WESTERN REGION
San Bruno, CA 94099

August 29, 1978

In reply refer to:

020:59-E-3:LTJ:j

State of California

Franchise Tax Board

Collection Section

3200 Wilshire Boulevard

Los Angeles, CA 90010

Re: Cecil C. Sedberry, SSN 463-26-5192

Gentlemen:

We are returning herewith the Order to Withhold Personal Income Tax which you forwarded to the Postmaster in Los Angeles. It is our understanding that your Headquarters office and the office of the State Attorney General agree that such orders are not applicable to federal agencies such as the United States Postal Service. If this understanding is not correct, please contact us further.

Yours very truly,

/s/ Lyman T. Johnston

Lyman T. Johnston

Regional Counsel

Enclosure

EXHIBIT L.

**STATE OF CALIFORNIA
FRANCHISE TAX BOARD**

LA-C:KI:bl

Certificate of Amount of Tax, Interest, and Penalties Due

*(Filed Pursuant to Parts 10 and 11, Division 2,
Revenue and Taxation Code)*

Certificate Number: 21-09161

County Recorded in: LOS ANGELES

The Franchise Tax Board of the State of California hereby certifies that the following named taxpayer is liable under Parts 10 and 11 of Division 2 of the Revenue and Taxation Code to the State of California for amounts due and required to be paid by said taxpayer as follows:

Name of Taxpayer: JOSEPH STOVALL

Social Security No.: 352-28-4394

Corporate No.:

**Last Known Address: 432 South Harvard Boulevard,
Los Angeles, California 90020**

**For Taxable Years: 1967-06425704 1969-02408543
1970-55128413 1971-02402873
1972-025087271 1973-025827102**

**Tax \$776.56, Penalties \$308.97, Interest \$161.54,
Cost(s) \$6.00, Total \$1,253.07;**

That further interest will accrue at the rate of six per cent per year until paid; that the Franchise Tax Board of the State of California complied with all of the provisions of Parts 10 and 11 of Division 2 of the Revenue and Taxation Code of the State of California in computing, levying, determining and assessing the tax; that said amounts are due and payable and have not been paid.

IN WITNESS WHEREOF, The Franchise Tax Board of the State of California has duly authorized the undersigned

to execute this Certificate in its name.

Dated: July 22, 1975 FRANCHISE TAX BOARD of the
State of California.

By /s/ R. E. Bancroft
R. E. BANCROFT
TAX COMPLIANCE SUPERVISOR I

[SEAL]

This is to certify that this is a full, true and correct copy
of the original document on file with the Franchise Tax
Board.

Martin Huff, Executive Officer
by /s/ V. Forsch

EXHIBIT M.
ORDER TO WITHHOLD
PERSONAL INCOME TAX

PLEASE RETURN THIS COPY WITH A CHECK PAYABLE TO THE FRANCHISE TAX BOARD. IF NO MONEY IS DUE THE EMPLOYEE, PLEASE RETURN THE BLUE COPY.

[Letterhead]

State of California, Franchise Tax Board.

August 22, 1978

LA-C:MK:aep

Postmaster

Attn: Personnel

Los Angeles, CA 90052

Soc. Sec. No. 352-28-4394

Taxpayer: JOSEPH STOVALL

Account No: 352-28-4394STOV

Total Due: \$729.45

Year(s): 1971, 1972, 1973

THE FRANCHISE TAX BOARD of the State of California hereby notifies you that the total amount of tax, penalty, and interest was not paid when due and is now due, owing and unpaid as shown.

WHEREFORE, on behalf of the People of the State of California, you are required to deduct and withhold the above amount from any credits or payments of any nature due, owing and unpaid to the taxpayer and forward the amount to this office with a remittance made payable to the Franchise Tax Board attached to the original copy. If no money is due the employee, please complete the questionnaire on the blue copy and return it (Section 18817 of the Revenue and Taxation Code).

FAILURE TO WITHHOLD and remit the amount due to the Franchise Tax Board may make you liable for such

amount (Section 18818 of the Revenue and Taxation Code).

YOU ARE NOT LIABLE to the taxpayer for any amounts that you are required to withhold and pay to this Board (Section 18819 of the Revenue and Taxation Code).

Collection Section

IMPORTANT!

PLEASE GIVE THE COPY OF THIS ORDER TO THE TAXPAYER AS SOON AS POSSIBLE. The taxpayer should contact one of our offices immediately if this order should not be complied with.

EXHIBIT N.

[Letterhead]

United States Postal Service
WESTERN REGION
San Bruno, CA 94099

August 29, 1978

In reply refer to:

020:59-E-3:LTJ:j

State of California

Franchise Tax Board

Collection Section

3200 Wilshire Boulevard

Los Angeles, CA 90010

Re: Joseph Stovall, SSN 352-28-4394

Gentlemen:

We are returning herewith the Order to Withhold Personal Income Tax which you forwarded to the Postmaster in Los Angeles. It is our understanding that your Headquarters office and the office of the State Attorney General agree that such orders are not applicable to federal agencies such as the United States Postal Service. If this understanding is not correct, please contact us further.

Yours very truly,

/s/ Lyman T. Johnston

Lyman T. Johnston

Regional Counsel

Enclosure

EXHIBIT O.
STATE OF CALIFORNIA
FRANCHISE TAX BOARD
LA-C:CG:LN

Certificate of Amount of Tax, Interest, and Penalties Due
*(Filed Pursuant to Parts 10 and 11, Division 2,
Revenue and Taxation Code)*

Certificate Number: 21-04145

County Recorded in: LOS ANGELES

The Franchise Tax Board of the State of California hereby certifies that the following named taxpayer is liable under Parts 10 and 11 of Division 2 of the Revenue and Taxation Code to the State of California for amounts due and required to be paid by said taxpayer as follows:

Name of Taxpayer: PAUL R. TALIAFERRO and/or
BARBARA J. TALIAFERRO

Social Security No: 561-26-7141 (H) 550-34-1080
(W)

Corporate No.:

Last Known Address: 316 North Savannah Street,
Los Angeles, California
90033

For Taxable Years: 1966-550800; 1967-06389616,
06389615; 1968-02437088,
02428880 1969-02428880,
02471206

Tax \$571.00, Penalties \$318.42, Interest \$161.83, Total \$1,051.25;

That further interest will accrue at the rate of six per cent per year until paid; that the Franchise Tax Board of the State of California complied with all of the provisions of Parts 10 and 11 of Division 2 of the Revenue and Taxation Code of the State of California in computing, levying, determining and assessing the tax; that said amounts are due and payable

and have not been paid.

IN WITNESS WHEREOF, The Franchise Tax Board of the State of California has duly authorized the undersigned to execute this Certificate in its name.

DATED: July 28, 1972 FRANCHISE TAX BOARD of the State of California

By /s/ S. Gordon

S. GORDON

TAX COMPLIANCE SUPERVISOR I

[SEAL]

This is to certify that this is a full, true and correct copy of the original document on file with the Franchise Tax Board.

Martin Huff, Executive Officer

By /s/ V. Forsch

EXHIBIT P.

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
LA-C:DC/IDS:SDA

Certificate of Amount of Tax, Interest, and Penalties Due
*(Filed Pursuant to Parts 10 and 11, Division 2,
Revenue and Taxation Code)*

Certificate Number: 21-08245

County Recorded in: LOS ANGELES

The Franchise Tax Board of the State of California hereby certifies that the following named taxpayer is liable under Parts 10 and 11 of Division 2 of the Revenue and Taxation Code to the State of California for amounts due and required to be paid by said taxpayer as follows:

Name of Taxpayer: B. J. TALIAFERRO AKA:
PAUL R. TALIAFERRO

Social Security No: 550-34-1080

Corporate No.:

Last Known Address: 316 North Savannah Street,
Los Angeles, California
90033

For Taxable Years: 1968-02428880; 1969-02471206;
1970-02475387; 1971-02458979

Tax \$689.00, Penalties \$344.50, Interest \$183.26,
Cost(s) \$6.00, Total \$1,222.76;

That further interest will accrue at the rate of six percent per year until paid; that the Franchise Tax Board of the State of California complied with all of the provisions of Parts 10 and 11 of Division 2 of the Revenue and Taxation Code of the State of California in computing, levying, determining and assessing the tax; that said amounts are due and payable and have not been paid.

IN WITNESS WHEREOF, The Franchise Tax Board of the State of California has duly authorized the undersigned

to execute this Certificate in its name.

Dated: September 10, 1974 FRANCHISE TAX BOARD
of the State of California

By /s/ J. G. A. Frimand

J. G. A. FRIMAND

TAX COMPLIANCE SUPERVISOR I

[SEAL]

This is to certify that this is a full, true and correct copy
of the original document on file with the Franchise Tax
Board.

Martin Huff, Executive Officer

By /s/ V. Forsch

EXHIBIT Q.
ORDER TO WITHHOLD
PERSONAL INCOME TAX

PLEASE RETURN THIS COPY WITH A CHECK PAYABLE TO THE FRANCHISE TAX BOARD. IF NO MONEY IS DUE THE EMPLOYEE, PLEASE RETURN THE BLUE COPY.

[Letterhead]

State of California, Franchise Tax Board.

August 14, 1978

LA-C:MK:YA

Postmaster

Attn: Personnel Section

Los Angeles, CA 90052

Soc. Sec. No. 561-26-7141

Taxpayer: PAUL R. TALIAFERRO

Account No.: 561-26-7141TALI

Total Due: \$1122.27

Year(s): 1966, 1968, 1969, 1970, 1974, 1975

THE FRANCHISE TAX BOARD of the State of California hereby notifies you that the total amount of tax, penalty, and interest was not paid when due and is now due, owing and unpaid as shown.

WHEREFORE, on behalf of the People of the State of California, you are required to deduct and withhold the above amount from any credits or payments of any nature due, owing and unpaid to the taxpayer and forward the amount to this office with a remittance made payable to the Franchise Tax Board attached to the original copy. If no money is due the employee, please complete the questionnaire on the blue copy and return it (Section 18817 of the Revenue and Taxation Code).

FAILURE TO WITHHOLD and remit the amount due to the Franchise Tax Board may make you liable for such

amount (Section 18818 of the Revenue and Taxation Code).

YOU ARE NOT LIABLE to the taxpayer for any amounts that you are required to withhold and pay to this Board (Section 18819 of the Revenue and Taxation Code).

Collection Section

IMPORTANT!

PLEASE GIVE THE COPY OF THIS ORDER TO THE TAXPAYER AS SOON AS POSSIBLE. The taxpayer should contact one of our offices immediately if this order should not be complied with.

Defendant's Answer to Plaintiff's Complaint.

United States District Court, Central District of California.

Franchise Tax Board, Plaintiff, v. United States Postal Service, Defendant. No. CV 78-4746-RF(PX).

Comes Now, the United States Postal Service, defendant, for its Answer, admits, denies, and avers as follows:

1. Admits the allegations in paragraph 1 of plaintiff's Complaint.

2. Paragraph 2 of plaintiff's Complaint contains jurisdictional allegations to which no answer is required, but insofar as an answer may be deemed to be required, the allegations are denied. However, defendant admits that the United States Postal Service is, and at all times material herein was, an establishment of the executive branch of the Government of the United States and doing business in Los Angeles County.

3. The allegation in paragraph 3 of plaintiff's Complaint contains a conclusion of law and not an allegation of fact to which an answer is required, but insofar as an answer may be deemed to be required, the allegation is denied.

4-5, inclusively. Admits the allegations contained in paragraphs 4 and 5 inclusively, of plaintiff's Complaint.

6-7, inclusively. Denies the allegations contained in paragraphs 6 and 7, inclusively, of plaintiff's Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

8. Defendant admits that it was served with a purported "notice" on or about July 28, 1978. Plaintiff's allegation that the purported "notice" was served pursuant to section 18817 of the California Revenue and Taxation Code is a conclusion of law and not an allegation of fact to which an answer is required, but insofar as an answer may be deemed to be required, the allegation is denied.

9. Denies, except to the extent that the allegation contained in paragraph 9 of plaintiff's Complaint is borne out by Exhibit C to the Complaint which is the best evidence of its contents.

10. Admits the allegations contained in paragraph 10 of plaintiff's Complaint. For a full and complete statement of the Postal service response, the Court is respectfully referred to Exhibit D of the Complaint which is the best evidence of its contents.

11-12, inclusively. Paragraphs 11 and 12 of plaintiff's Complaint contain conclusions of law and not allegations of fact to which an answer is required, but insofar as an answer may be deemed to be required, the allegations are denied.

13. Defendant repeats its answers to paragraphs 1-4, respectively and inclusively, of plaintiff's Complaint.

14. Denies the allegations contained in paragraph 14 of plaintiff's Complaint.

15-16, inclusively. Denies the allegations contained in paragraphs 15 and 16, inclusively, of plaintiff's Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

17. Defendant admits that it was served with a purported "notice" on or about August 15, 1978. Plaintiff's allegation that the purported "notice" was served pursuant to section 18817 of the California Revenue and Taxation Code is a conclusion of law and not an allegation of fact to which an answer is required, but insofar as an answer may be deemed to be required, the allegation is denied.

18. Denies, except to the extent that the allegation contained in paragraph 18 of plaintiff's Complaint is borne out by Exhibit F to the complaint which is the best evidence of its contents.

19. Admits the allegations contained in paragraph 19 of plaintiff's Complaint. For a full and complete statement of the Postal Service response, the Court is respectfully referred to Exhibit G to the Complaint which is the best evidence of its contents.

20-21, inclusively. Paragraphs 20 and 21, inclusively, of plaintiff's Complaint contain conclusions of law and not allegations of fact to which an answer is required, but insofar as an answer is deemed to be required, the allegations are denied.

22. Defendant repeats its answers to paragraphs 1-4, respectively and inclusively, of plaintiff's Complaint.

23. Admits the allegations contained in paragraph 23 of plaintiff's Complaint.

24-25, inclusively. Denies the allegations contained in paragraphs 24-25, inclusively, of plaintiff's Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

26. Defendant admits that it was served with a purported "notice" on or about August 22, 1978. Plaintiff's allegation that the purported "notice" was served pursuant to section 18817 of the California Revenue and Taxation Code is a conclusion of law and not an allegation of fact to which an answer is required, but insofar as an answer may be deemed to be required, the allegation is denied.

27. Denies, except to the extent that the allegation contained in paragraph 27 of plaintiff's Complaint is borne out by Exhibit J to the Complaint which is the best evidence of its contents.

28. Admits the allegation contained in paragraph 28 of plaintiff's Complaint. For a full and complete statement of the Postal Service response, the Court is respectfully referred to Exhibit K to the Complaint which is the best

evidence of its contents.

29-30, inclusively. Paragraphs 29 and 30, inclusively, of plaintiff's Complaint contain conclusions of law and not allegations of fact to which an answer is required, but insofar as an answer may be deemed to be required, the allegations are denied.

31. Defendant repeats its answers to paragraphs 1-4, respectively and inclusively of plaintiff's Complaint.

32. Admits the allegations contained in paragraph 32 of plaintiff's Complaint.

33-34, inclusively. Denies the allegations contained in paragraphs 33 and 34, inclusively, of plaintiff's Complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof.

35. Defendant admits that it was served with a purported "notice" on or about August 22, 1978. Plaintiff's allegation that the purported "notice" was served pursuant to section 18817 of the California Revenue and Taxation Code is a conclusion of law and not an allegation of fact to which an answer is required, but insofar as an answer may be deemed to be required, the allegation is denied.

36. Denies, except to the extent that the allegation contained in paragraph 36 of plaintiff's Complaint is borne out by Exhibit M to the Complaint which is the best evidence of its contents.

37. Admits the allegations contained in paragraph 37 of plaintiff's Complaint. For a full and complete statement of the Postal Service response, the Court is respectfully referred to Exhibit N to the Complaint which is the best evidence of its contents.

38-39, inclusively. Paragraphs 38 and 39, inclusively, of plaintiff's Complaint contain conclusions of law and not allegations of fact to which an answer is required, but insofar

as an answer may be deemed to be required, the allegations are denied.

40. Defendant denies each and every other allegation contained in plaintiff's Complaint not specifically admitted, denied, or otherwise qualified herein.

FIRST AFFIRMATIVE DEFENSE

41. As a first affirmative defense, defendant alleges that plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

42. As a second affirmative defense, defendant alleges that the Court lacks jurisdiction over this action.

THIRD AFFIRMATIVE DEFENSE

43. As a third affirmative defense, defendant alleges that plaintiff failed to exhaust its administrative remedies.

FOURTH AFFIRMATIVE DEFENSE

44. As a fourth affirmative defense, defendant alleges that the Court lacks jurisdiction in that the United States has not waived its immunity and has not consented to a suit of this nature.

FIFTH AFFIRMATIVE DEFENSE

45. As a fifth affirmative defense, defendant alleges that this action is barred by the Supremacy Clause of the United States Constitution, Article VI.

SIXTH AFFIRMATIVE DEFENSE

46. As a sixth affirmative defense, defendant alleges that plaintiff has breached its February, 1974, 5 U.S.C. §5517 contract with defendant.

SEVENTH AFFIRMATIVE DEFENSE

47. As a seventh affirmative defense, defendant alleges that plaintiff is estopped to deny that the action may not lie.

WHEREFORE, defendant prays that plaintiff's Complaint be dismissed and that such other and further relief as the Court deems just and proper be granted.

Dated: This 21st day of March, 1979.

Respectfully submitted,

/s/ Barbara Allen Babcock

BARBARA ALLEN BABCOCK

Assistant Attorney General

ANDREA SHERIDAN ORDIN

United States Attorney

LAWRENCE B. GOTLIEB

Assistant United States Attorney

/s/ David Epstein

DAVID EPSTEIN

/s/ Alfreda R. Bennett

ALFRED A. BENNETT

Civil Division

Department of Justice

Washington, D.C. 20530

Telephone: (202) 724-7163

Attorneys for Defendant

OF COUNSEL:

CHARLES R. BRAUN

Assistant General Counsel

Special Projects Division

United States Postal Service

**Petition for Rehearing and Suggestion
That Rehearing Be En Banc.**

Nos. 80-5694 and 80-5700.

United States Court of Appeal for the Ninth Circuit.

Employment Development Department, Plaintiff-Appellant, v. United States Postal Service, Defendant-Appellee.

Franchise Tax Board, Plaintiff-Appellant, v. United States Postal Service, Defendant-Appellee.

Appeal from the United States District Court for the Central District of California.

Filed: February 24, 1983.

INTRODUCTORY STATEMENT

Appellant Franchise Tax Board ("the Board") petitions this Court for a rehearing en banc to reconsider the judgment entered in No. 80-5700 on February 10, 1983.

The majority Opinion of this Court has created an anomalous situation. Although private judgment creditors are permitted to garnish the wages of employees of appellee United States Postal Service ("the Postal Service") for payment of *any* debt owed by the employees, the Board is barred from garnishing those same wages of those *same* employees for payment of state income taxes. In light of the vital importance of the prompt collection of state taxes and the absence of any qualification upon the waiver of sovereign immunity of the Postal Service in 39 U.S.C. § 401 et seq., the majority opinion is difficult to reconcile.

In determining that 5 U.S.C. § 5517 prohibits the Board's garnishment under California Revenue and Taxation Code § 18817, the Board believes that the majority has either overlooked or misapprehended a number of facts.

1. Contrary to the discussion at page 11 of the majority Opinion, the Board's Order To Withhold ("OTW") pursuant to Cal. Rev. & Tax Code § 18817 does *not* deal with the same subject matter as 5 U.S.C. § 5517. The OTW pertains to the collection of *delinquent* tax liabilities. However, 5 U.S.C. § 5517 is only involved with *current* anticipated tax liabilities. The distinction between garnishments of wages to satisfy delinquent tax liabilities on the one hand and payroll withholding to satisfy current anticipated tax liabilities on the other, is crucial. While 5 U.S.C. § 5517 does not authorize garnishment of federal employees' wages for delinquent state tax debts, it does not prohibit such garnishment if permissible under other statutes (e.g., 39 U.S.C. § 401(1)).

2. Contrary to the majority Opinion at page 9 line 7, the State of California did not enter into an agreement as contemplated by 5 U.S.C. § 5517 on November 6, 1952. Rather, the agreement to which the majority refers was signed in February 1974. *See*, Excerpt pp. 134-136. The State of California did not even commence payroll withholding of California residents until January 1, 1972. *See*, Calif. Rev. and Tax. Code § 18806(a) (as it read before 1980 repeal and reenactment).

3. Consistent with 2 above, the majority Opinion has mistakenly concluded at page 9 lines 16-19 that the employees of the Post Office Department were subjected to payroll withholding in California. As the Postal Reorganization Act was enacted in 1970 - approximately four years prior to the commencement of payroll withholding in California - it would have been impossible for any employee of the Post Office Department to ever have had his or her wages withheld under California's payroll withholding law.

4. At page 11, lines 22-24 of the majority Opinion, the majority has mischaracterized the position of the Board.

The Board is not contending that the general waiver of sovereign immunity under 39 U.S.C. § 401(1) overrides 5 U.S.C. § 5517. Rather, the Board has argued that 5 U.S.C. § 5517 only applies to current payroll withholding and by its terms does not prohibit wage garnishment for state taxes provided authority to do so exists under the provisions of other statutes. Two separate sovereign immunities are involved in 5 U.S.C. § 5517 and 39 U.S.C. § 401(1). Although the former is limited in scope in relation to the latter, their coexistence is quite compatible.

Finally, the Board believes this matter is appropriate for rehearing en banc. The exceptional importance of the collection of state taxes is not a matter which should be blithely cast aside. In the absence of a federal statute which explicitly prohibits garnishment of wages of Postal employees for state tax debts, this vital means of collection of these liabilities must be preserved not only for California but also for any other state in which Postal employees reside.

ARGUMENT

I

WAGE GARNISHMENT AND PAYROLL WITHHOLDING DO NOT INVOLVE THE SAME SUBJECT MATTER

In reaching its conclusion that 5 U.S.C. § 5517 bars the Board's wage garnishments under Cal. Rev. & Tax Code § 18817, the majority has incorrectly stated that Sections 5517 and 18817 deal with the same subject matter. Section 5517 is only involved with payroll withholding of *current* anticipated tax liabilities. It neither prohibits nor permits wage garnishment of *delinquent* tax liabilities. Section 18817 is only involved with the collection of *delinquent* tax liabilities. The State of California has a full scheme of payroll withholding statutes patterned after the Internal Revenue

Code designed for the collection of *current* anticipated tax liabilities. Section 18817 is *not* part of that scheme.

The legislative history under 5 U.S.C. § 5517 is clear on the point that current payroll withholding akin to the income tax withholding provisions of the Internal Revenue Code (codified at 26 U.S.C. §§ 3401-3404) was the sole aim of the legislators. The following statement by Mr. Prouty, the representative from Vermont, is illustrative:¹

“The enactment of S. 1999 would accord to the States the same cooperation in tax collections which the Federal Government demands from them under 26 United States Code, pages 1622 to 1624 [now 26 U.S.C. §§ 3402-3404] and therefore increase the revenue of State governments, lessening their dependence on the Federal Government and strengthening our system of duality of sovereignty. (98 Cong. Record-House 9374 (1952).)

Furthermore, the legislative history indicates that Section 5517 was enacted because Congress believed that without the statute, because of sovereign immunity, federal agencies lacked authority to withhold state income taxes from the wages of their employees. *See*, 98 Cong. Record-House 9374 (1952); Sen. Rept. No. 1309 reprinted in 2 U.S. Code Congressional & Admin. News 2360 (1952); House Rept. No. 2474 reprinted in 2 U.S. Code Congressional & Admin. News 2434 (1952). As such, Section 5517 was a limited waiver of sovereign immunity for all federal agencies solely in the area of payroll withholding of current anticipated tax liabilities.

¹In 1952, only the States of Vermont and Oregon and the territories of Alaska and Hawaii had payroll withholding statutes to which the 5 U.S.C. § 5517 agreement would apply. *See*, Sen. Rept. No. 1309, reprinted in 2 U.S. Code Cong. & Admin. News 2361 (1952); House Rept. No. 2474, reprinted in U.S. Code Cong. & Admin. News 2434 (1952).

Payroll withholding under California law is a relatively recent phenomenon in that it was not until 1972 that it commenced with respect to California residents. Calif. Rev. & Tax Code § 18806 (as it read prior to 1980 repeal and reenactment). On the other hand, the Board's garnishment provisions under Section 18817 have been in existence for some forty years. Currently, payroll withholding is administered by the Employment Development Department and the pertinent statutes are now found in California Unemployment Insurance Code § 13000, et seq. Moreover, wage garnishments for taxes are now controlled by provisions of California Code of Civil Procedure § 723.070, et seq. That which the above plainly indicates is that the placement of the prior California payroll withholding provisions (Calif. Rev. & Tax. Code §§ 18805-18816) under the same Article and Chapter of the California Revenue and Taxation Code as the prior garnishment provisions of Calif. Rev. & Tax. Code §§ 18817-18819, simply does not mean that they involve the same subject matter.

To further demonstrate the diverse natures of payroll withholding and wage garnishment it should be noted that federal payroll withholding and federal wage garnishments for taxes do not appear in the same Subtitle much less same Chapter of the Internal Revenue Code. The payroll withholding provisions can be found at 26 U.S.C. § 3401, et seq. These provisions are located in Chapter 24 of Subtitle C of the Code. However, the Internal Revenue Service's wage garnishment provisions are found in Chapter 64 of Subtitle F at 26 U.S.C. § 6331, et seq. The California payroll withholding provisions were patterned after the Internal Revenue Code. *See e.g.*, [old] Calif. Rev. & Tax Code § 18806 (now Calif. Unemp. Ins. Code §§ 13022-13029) which is substantially similar to 26 U.S.C. § 3402; [old] Calif. Rev. & Tax Code § 18807 (Calif. Unemp. Ins. Code 13009) -26

U.S.C. § 3401(a). Likewise, the Board's OTW provisions (Calif. Rev. & Tax. Code §§ 18817-18819) are quite similar to the Internal Revenue Service's wage garnishment provisions. *See*, Calif. Rev. & Tax. Code § 18817 (26 U.S.C. § 6331(a)(d)); § 18818 (26 U.S.C. § 6332(c)(1)); § 18819 (26 U.S.C. § 6332(a) & (d)).²

Furthermore, the general federal requirements for wage garnishments are under a completely different body of law - Title 15 U.S.C. - and are administered by the Department of Labor. California complies with the provisions of that law even in the area of tax collection. *See*, Calif. Code of Civil Procedure §§ 723.050, 723.074(b) (although exempted under 15 U.S.C. § 1673(b) California abides by the twenty-five percent maximum imposed on non-tax judgment creditors under 15 U.S.C. § 1673(a).) Moreover, whereas employees can adjust the amount of current taxes to be withheld under payroll withholding provisions by filing a withholding certificate ("W-4") claiming a different number of exemptions, no such right exists under wage garnishments.³

Plainly, the majority's analysis in attempting to find a conflict between 5 U.S.C. §§ 5517 and Calif. Rev. & Tax. Code § 18817 is faulty. Payroll withholding is not the same as wage garnishment. Section 5517 does not deal with wage garnishment nor does it purport to prohibit wage garnishment for federal employees where such is authorized under

²Both appellants noted the interrelationships and similarities between the federal and California statutes in Appellants' Opening Brief, pp. 38, 41-42.

³The "exemptions" which exist under wage garnishments for taxes (other than the 25 percent limitation of 15 U.S.C. § 1673) only include a "hardship exemption" (Calif. Code of Civil Procedure §§ 723.051, 723.075(c)). There is nothing analogous to withholding certificates for wage garnishments.

some other statute. Neither Section 5517 nor 31 CFR 215 goes that far. Rehearing should be granted to correct these errors.

II

THE STATE OF CALIFORNIA DID NOT ENTER INTO THE SECTION 5517 AGREEMENT UNTIL 1974

The majority Opinion mistakenly states that the State of California entered into a Section 5517 payroll withholding agreement on November 6, 1952. *See*, Opinion, p. 9. The record indicates that the agreement to which the majority refers was executed in February 1974. *See*, Excerpt, pp. 134-136. Further, California did not even commence payroll withholding of California residents until January 1, 1972. *See*, Calif. Rev. & Tax. Code § 18806. As the majority's entire analysis flows from this misconception, rehearing should be granted to rectify this error.

III

NO EMPLOYEES OF THE POST OFFICE DEPARTMENT WERE EVER SUBJECT TO PAYROLL WITHHOLDING

The enactment of the Postal Reorganization Act in 1970 antedated both the execution of the Section 5517 agreement by the State of California in 1974, and the commencement of payroll withholding in California in 1972. Therefore, contrary to the majority's statement at page 9 of the Opinion, *no* Post Office Department employees ever could have been subject to California payroll withholding. Accordingly, as with Argument II above, since the majority's analysis is founded upon a misapprehension of the facts rehearing would appear to be appropriate to correct this error.

IV

5 U.S.C. § 5517 ONLY APPLIES TO CURRENT PAYROLL WITHHOLDING AND DOES NOT PROHIBIT WAGE GARNISHMENT FOR TAXES OF POSTAL EMPLOYEES WHERE AUTHORITY TO DO SO EXISTS UNDER 39 U.S.C. § 401(1)

At page 11 of the majority Opinion the position of the Board has been mischaracterized. The Board is not contending that the general waiver of sovereign immunity under 39 U.S.C. § 401(1) overrides 5 U.S.C. § 5517. Rather, the Board has pointed out that the sovereign immunity which was limitedly waived in 5 U.S.C. § 5517 applied to *all* federal agencies and pertained only to current payroll withholding of state taxes for those agencies. However, the sovereign immunity which was waived in 39 U.S.C. § 401(1) is a *general* waiver of sovereign immunity which applies only to the Postal Service. This general waiver has been interpreted by this Court and Circuit Courts in at least seven of the Circuits as permitting garnishment of Postal employees' wages. There is no qualification on this waiver of sovereign immunity. Moreover, there is no qualification or limitation on the type of debts which can be garnished from Postal employees' wages.⁴ Logically speaking, there is no reason to treat Postal employees' commercial debts any differently than their tax debts. Indeed, the majority Opinion

⁴Compare 38 U.S.C. § 1820(a)(1) which includes a "sue and be sued" clause applicable to the Veteran's Administration. Following a district court decision upholding wage garnishments under that statute against VA employees, the statute was amended to "qualify" the "sue and be sued" clause explicitly stating that wage garnishments were not permitted under the authority of that statute. See, *May Dept. Stores Co. v. Smith* (8th Cir. 1978) 572 F.2d 1275.

Obviously, if a qualification of the Postal Service's sue and be sued clause was intended for tax debts, Congress could have so amended 39 U.S.C. § 401(1).

has placed these tax debts on a lower plane than commercial debts which is completely contrary to long established authority.

The State of California has a vital interest in collecting taxes from its taxpayers. This vital interest which is shared by all other states and taxing authorities was recognized long ago by the United States Supreme Court in *Dows v. City of Chicago* (1870) 78 U.S. (11 Wall.) 108, where a National Bank tried to restrain the collection of a tax levied by the City of Chicago upon the bank's capital shares. The Supreme Court decided that no court could enjoin the collection of the tax, and stated as follows:

"It is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible." (*Dows, supra*, 78 U.S. at 110.)

The Supreme Court also stated that "The prompt payment of taxes is always important to the public welfare. It may be vital to the existence of a government." (*Springer v. United States* (1880) 102 U.S. (12 Otto) 586, 594), and that "[T]axes are the lifeblood of government, and their prompt and certain availability an imperious need." (*Bull v. United States* (1935) 295 U.S. 247, 261; *Accord G.M. Leasing Corp. v. United States* (1977) 429 U.S. 338, 350.)

In all, the anomalous situation which the majority Opinion has created is simply unsupported by the record and the law. 5 U.S.C. § 5517 and 39 U.S.C. § 401(1) can peace-

fully coexist.⁵ Wage garnishments for state tax debts of Postal employees simply do not run afoul of Section 5517 because they are authorized by 39 U.S.C. § 401(1). Rehearing is absolutely necessary to correct this anomalous situation.

SUGGESTION THAT REHEARING BE EN BANC

The Board respectfully suggests that a rehearing of No. 80-5700 en banc is appropriate for the following reasons:

1. The collection of state taxes is a matter of extreme importance. Before an infringement upon the vital right may be permitted it must be clearly demonstrated that indeed a federal statute such as 5 U.S.C. § 5517 was intended to expressly *limit* that right. However, in this instance, Section 5517 was not intended to limit the collection of state taxes, rather to facilitate that collection through payroll withholding. Contrary to the majority Opinion, Section 5517 was not intended to restrict the collection of delinquent state tax liabilities where such collection is authorized under the provisions of another Act of Congress such as 39 U.S.C. § 401(1).

2. The majority Opinion has created an anomalous situation where tax debts of Postal employees are being placed

⁵Compare an analogous situation where the Postal Service argued *unsuccessfully* that 42 U.S.C. § 659 (statute authorizing wage garnishment for alimony and child support debts for all federal employees) barred garnishment of Postal employees' wages for commercial debts. In *Iowa-Des Moines National Bank v. U.S.* (S.D. Iowa, 1976) 414 F.Supp. 1393 the Court held that since the Postal Service had already consented to "sue and be sued," in 39 U.S.C. § 401(1), the consent of the United States in 42 U.S.C. § 659 (for alimony and child support debts) is *superfluous* insofar as garnishments against the Postal Service are concerned.

Similarly, 5 U.S.C. § 5517 may well be *superfluous* insofar as the Postal Service is concerned since all that statute is imposing upon the Postal Service is the duties and responsibilities required of any private employer. The same can be said for Calif. Rev. & Tax. Code § 18817.

on a *lower* plane than commercial debts. This is completely unwarranted and in fact conflicts with longstanding authority regarding the preeminence of tax debts.

3. The majority Opinion has disregarded the Postal Service's concession that garnishment of Postal employees' wages was permissible, even in light of their Section 5517 argument, if the Board obtained a court judgment for taxes.

4. Finally, as Postal employees reside and are required to pay state and local taxes not only in California but also in virtually all of the States, the problem of how to collect these delinquent liabilities is not exclusive to California.

CONCLUSION

Based upon the foregoing, the Board respectfully requests that this Court grant a rehearing en banc.

DATED: February 23, 1983.

Respectfully submitted,

JOHN K. VAN DE KAMP, Attorney General
of the State of California

EDMOND B. MAMER,

JEFFREY M. VESELY,

Deputy Attorneys General

/s/ Jeffrey M. Vesely

JEFFREY M. VESELY

Attorneys for Appellants

Order.

Supreme Court of the United States.

No. 83-372.

Franchise Tax Board of California, Appellant, v. United States Postal Service.

APPEAL from the United States Court of Appeals for the Ninth Circuit.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

January 9, 1984.

(THIS PAGE INTENTIONALLY LEFT BLANK)